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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,470	03/25/2004	Steven M. Hansen	AD7006USNA	8340
23906 7590 03/16/2007 E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			EXAMINER ZEMEL, IRINA SOPJIA	
			ART UNIT 1711	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/16/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/809,470

Applicant(s)

HANSEN ET AL.

Examiner

Irina S. Zemel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 December 0206.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 14-29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 30-33 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-8, 11, 13, 30-31 are rejected under 35 U.S.C. 102(a or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 02/0837794 to E. I. DuPont De Nemours, (hereinafter "DuPont").

The rejection stands as per reason of record.

Insofar as newly introduced limitation to the adding the microfibers to the polymer composition by contacting a slurry with a polymerizable component, the limitation is directed to a process step in the product claim. As previously discussed, when the claims are directed to the product and not the process (even though the product is claimed in the product-by-process format), the patentability of the product claims depends solely on the product characteristics regardless of the process by which the product was obtained. So long as the claimed product and the product disclosed in the prior art exhibit same properties, the product is deemed unpatentable over the prior art. In the instant case, since the size and the composition of the microfibers in the reference is identical to the claimed microfibers, and the final product is a polyester composition that does not contain the liquid media of the slurry (it is either reacted as a polymer precursor or evaporated as the polycondensation is conducted at the temperatures significantly higher than the liquid media boiling point as evident from illustrative examples of the instant specification.) Moreover, as, again supported by the disclosure of the instant specification, the fibers can be added to either the polymerizable component or to the polyester. Based on all of those facts, it is still reasonable believed that the compositions disclosed in the DuPont reference

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inherently exhibit the same properties as the claimed composition, thus meeting the claim limitations. The burden was shifted to the applicants to provide evidence to the contrary. However, no evidence is presented on the record to demonstrate that the claimed compositions that are using the fibers obtained by a specified method are any different from the compositions disclosed in the reference. The applicants, once again, are invited to submit evidence that would clearly distinguish the claimed product and the product disclosed in the cited art.

Claims 1-5, 7-8, and 30-32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Patent 6,068,922 to Vercesi et al., (hereinafter "Vercesi").

The rejection stands as per reasons of record. Insofar as the newly added limitation, as discussed above, the limitation is directed to the process step in the product claims, and as such and for the reasons discussed above, does not distinguish the claimed product over the product of the Vercesi reference.

### ***Claim Rejections - 35 USC § 103***

Claim 12 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over DuPont.

The rejection of claims stands as per reason of record (and as per discussion applicable to claim 1 above).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vercesi.

The rejection of claims stands as per reason of record record (and as per discussion applicable to claim 1 above).

### ***Response to Arguments***

Applicant's arguments filed 12-18-2006 have been fully considered but they are not persuasive. Regarding the argument concerning the Dupont (Phillipoz) reference, the applicants argue, once again, that the reference does not disclose the microfibers are produced in the form of slurry or, as per amendment to the claims, are added to the composition by contacting the slurry with a polymerizable component. The examiner wishes to point out that she never alleged that the DuPont reference discloses the process of preparing the fibers as claimed by the applicants. However, once again, the claims are NOT directed to the process of making of either the compositions or the fibers. As such, the patentability of the product claims depends solely on the product characteristics regardless of the process by which the product was obtained. There is NO evidence on the record that provide support for patentability or any data that demonstrates patentable distinction of the claimed product over the disclosed compositions. Furthermore, as discussed above, it is reasonable believed that the final product does not contain the slurry components other than the fibers, and, thus, once again, is indistinguishable from the claimed PRODUCT.

The bottom line is that the claims are drawn to the composition containing two components, and for the reasons set forth above, the claimed compositions are considered to be identical to the compositions disclosed in the reference. The burden

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was shifted to the applicants to provide evidence of patentable differences between the claimed product and the product disclosed in the reference, but the applicants failed to provide any evidence or even arguments to that matter.

Regarding the arguments concerning Vercesi reference, the arguments are not convincing either. The applicants state that the reference teaches away from using slurries. First of all, as per discussion above, this is irrelevant to the claimed product in the absence of showing of evidence supporting the patentable difference between the claimed and disclosed compositions. But n even more interesting is that the referenced lines in column 3 specifically refer to "moist" aramid fibers with moisture content as high as 85%. The applicants state that having 85 % of liquid component does not make it a slurry, however, the applicants own specification discloses that suitable slurries can contain as high as 50 % solid fibers (page 4 of the instant specification). Thus, applicants conclusion that the reference teaches away from the "slurries" seems to contradict the slurry" description given in the instant specification.

Once again, in the absence of showing of clear distinction between the claimed and disclosed PRODUCTS, the invention as claimed is considered to be unpatentable over the compositions of prior art.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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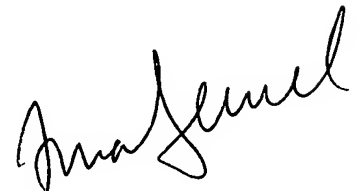
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ISZ



IRINA ZEMEL  
PRIMARY EXAMINER